

**REMARKS/ARGUMENTS**

Pursuant to 37 C.F.R. §1.111, reconsideration of the instant application, as amended herewith, is respectfully requested. Entry of the amendment is requested.

Claims 1 through 28 are presently pending before the Office. No claims have been canceled. Applicant has amended the specification and the claims. No new matter has been added. Support for the amendments can be found throughout the specification as originally filed, and in particular at Figures 3-4 and 10-11. Applicant is not intending in any manner to narrow the scope of the originally filed claims. Claims 24 through 28 are re-presentations of claims 15 through 19, which the Examiner previously determined to be allowable if re-presented.

The Examiner's Action mailed February 27, 2003 and the references cited therein have been carefully studied by Applicant and the undersigned counsel. The amendments appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is believed to be in condition for allowance.

The Examiner has objected to the drawings because there is no description in the specification for element 60. This objection is respectfully traversed. On page 12, line 8, explicit mention is made in the specification referring to element 60 as the central faceted portion of the columnar insert. Reconsideration of this objection is respectfully requested.

The Examiner has also objected to the drawings because there is no reference in the drawings to the "means for centrally locating the supports" and "the means for facilitating being located two-thirds up the height of the panel." This objection is respectfully traversed.

The referenced elements are named parts of the claims which were originally filed. Therefore, they are also validly part of the specification as filed. As shown in the amended specification, the referenced elements have been added to the "Detailed Description of the Invention" portion of the pending application. The points of inclusion provide proper numbering of the elements. Thus, as amended, a "means for centrally locating the supports" is shown at 18,20 and a "means for facilitating being located two-thirds up the height of the panel" is shown at 46. Reconsideration of this objection is respectfully requested.

The Examiner has also objected to the specification. One reason given for objection is that the term "facades" has spaces within it at page 7, line 4. The spaces have been removed in this amendment, and reconsideration of this objection is respectfully requested.

The second reason for objection is that the "means for reinforcing the supports centrally" and a "means for facilitating being located two-thirds up the height of the panel" is not supported in the specification. Applicant respectfully traverses this objection.

First, the language as provided is understandable to one of ordinary skill in the art to means certain structure within the specification. It is well known that "means for" is a proper claim form under 35 U.S.C. § 112 without having the recital of structure or material. However, the claim, as amended, highlights the structure as recited in the specification. Therefore, the

claim language outlined in the Office Action has been added to the "Detailed Description of the Invention" portion of the specification, as amended, to make clear to the Examiner exactly which structure is referenced by the "means for" claim language. Reconsideration of this objection is respectfully requested.

Relying on 35 U.S.C. §102(b), the Examiner has rejected the subject matter of claims 1-3, 5 and 9 as being anticipated by U.S. Patent No. 6,244,005 to Wallin ("Wallin"). Applicant respectfully traverses the rejection and request reconsideration.

Applicant respectfully submits that it is important to note that, historically, the Office and the Federal Circuit has required that for a §102 anticipation, a single reference must teach (i.e., identically describe) each and every element of the rejected claim. The Office has steadfastly and properly maintained that view.

The Wallin patent fails this test. The structural differences in Wallin are clear upon careful reading of the reference. Wallin discloses a wall panel with flange forms (30) made of sheet material, wherein flange forms protrude below the wall panel. Also, Wallin discloses a wall which requires a footing (9) that is completely separate from a footing pad (21).

The interlocking footing and footing pad taught by Wallin are separate for ease of manufacture at the site. The monolithic footer in the present invention allows precise voids corresponding to the ends coming out of the bottom of the wall to be pre-drilled into the footer for easier and more precise alignment.

Accordingly, each and every element of Applicant's claims has not been taught in that single reference. Wallin uses a completely different mechanism for putting the wall in place. Unlike the present invention, the Wallin flange forms are too flimsy to be of any structural use. Also, the end bars as taught in Wallin are hooked. Therefore, exact placement of the wall must be made at a specific optimum angle for hooking onto a bar within the footing. Then, concrete or binder must be filled in the Wallin void between the end bar and the footing bar, so that the wall remains in place. Thus, cement mixing on site is required. The Wallin configuration therefore makes it more laborious to put up the Wallin wall, and requires installation by laborers having much greater skill than that necessary to practice the instant invention.

Also, the flange forms as taught in Wallin would require either a specially shaped void or an overly large void in the footer. A specially shaped void would be laborious, or even impossible when using certain materials. The overly large void would defeat any potential improvement in the structural integrity as found in the present invention.

In addition, the Wallin does not teach welding of the wall to a footing. The flange forms referenced by the Examiner cannot be the structural equivalent of the present invention's claimed weld plate, as amended, because a weld on the flimsy flange forms would be unable to improve the structural integrity of the wall. Thus no weld plate as claimed in the amended application is taught by Wallin.

In other words, the rejected claims do not read literally on any single item of prior art because Wallin does not teach, disclose or suggest the monolithic footer of the present invention.

In addition, Wallin does not teach, disclose or suggest a straight-ended rod member, or a complementary hole for a straight-ended rod member. Furthermore, structural welding of the wall to the footer is absent. In other words, Wallin does not teach, disclose or suggest an improved tilt up wall system with increased ease of pre-form construction, installation and alignment. Accordingly, Applicant respectfully submits that claims 1-3, 5 and 9 have not been anticipated by the Wallin patent under 35 U.S.C. §102(b), and respectfully requests that such rejection be withdrawn.

Also, the Examiner has rejected claims 20-23 as being anticipated by U.S. Patent No. 5,956,912 to Carter et al. ("Carter"). Applicant respectfully traverses the rejection and request reconsideration.

Carter also fails the anticipation test outlined above. Carter is a form for casting concrete horizontally in place. By its very nature it cannot be placed between two pre-formed walls, as a portion of the insert is to be imbedded in the poured concrete. Carter is used when the concrete is still liquid, and is used as a joint in a wall. See Col. 8, l. 26-30. Carter teaches an insert with spiked portions (842) which starts as a form as shown in Figure 15 of Carter. The insert becomes set into the wet concrete as it is poured. For strength in the connection, spiked portions are set into the wet concrete. Thus, the insert of Carter cannot be an insert for pre-cast chamfered walls as taught in the amended claims because the spikes in Carter make it incapable of serving as a connector for a pre-cast wall.

Accordingly, Applicant respectfully submits that claims 20-23 have not been anticipated by the Carter patent under 35 U.S.C. §102(b), and respectfully requests that such rejection be withdrawn.

The Examiner's rejection of claims 4, 6-8 and 11 under 35 U.S.C. §103(a) as being unpatentable over Wallin is also respectfully traversed. The Examiner rejects claims 4, 6-7 and 11 as obvious matters of "design choice." Claim 8 is rejected as a "well known art recognized equivalent means for lifting and positioning a panel" without any reference to the prior art.

Under the rules of examination, the mere fact that references can be modified or combined does not render the combination of elements obvious unless the prior art also suggests the desirability of the combination. MPEP §2143.01, quoting *In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990). Moreover, Wallin does not teach the desirability of using a vertical reinforcement bar or the use of welding plates at all. In fact, in teaching flimsy flange forms to be set in a void, Wallin teaches away from making a structural weld between the wall and the footer as taught in the patent application as amended.

The Examiner's rejection of claim 10, 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over Wallin in view of U.S. Patent No. 6,244,005 to Harris ("Harris") is also respectfully traversed. The spacer taught in Harris is a Styrofoam seal (112). The seal taught in Harris is a seal against infiltration. Col. 8, l. 5-7. The Styrofoam would be completely unusable for aligning panels because it would be quickly and easily crushed during the panel placement process. Harris does not teach the placement of an aligning spacer as claimed at all. Furthermore,

unlike Harris, the chamfering of the present invention is on the inner and outer walls, to receive complementary surfaces on the spacer. Thus, Harris fails to teach the invention as claimed in claim 10 of the amended application.

Likewise, claim 12, as amended, is respectfully traversed. As stated above, nothing in Wallin teaches or suggests a monolithic footer to be used in conjunction with the tilt-up wall. Also, the straight end portions to be placed in the footer in the present invention, as amended, provide a structural connection with corresponding holes that is lacking in Wallin or Harris.

In addition, the Examiner's rejection of claim 13 with regard to the inclusion of shims is also respectfully traversed. As stated above, the mere fact that references can be modified or combined does not render the combination of elements obvious unless the prior art also suggests the desirability of the combination. Without suggestion or specific teachings from the relevant prior art of the benefit of the inclusion of shims in the present invention, this claim cannot be obvious in light of the cited references.

The Office has used the claimed invention as a reference against itself as if it had preceded itself in time. Legal authority invalidates such an analytical or reverse engineering approach to patent examination. It is not Applicant's burden to refute the Office's position that it would have been obvious to one of ordinary skill in this art at the time this invention was made to arrive at the present invention in view of the prior art patents. It is the burden of the Office to show some teaching or suggestion in the reference to support this allegation. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d at 1051, 5 U.S.P.Q.2d at 1438-39 (Fed. Cir. 1988).

A finding by the Office that a claimed composition would have been obvious to one of ordinary skill in the art at the time the invention was made based merely upon finding similar elements in a prior art reference would be "contrary to statute and would defeat the congressional purpose in enacting Title 35." Panduit Corp. v. Dennison Mfg. Co., 1 U.S.P.Q.2d 1593 at 1605 (Fed. Cir. 1987). Accordingly, Applicant respectfully submits that claims 4, 6-8, and 10-13 are patentable over the cited patents under 35 U.S.C. §103. Withdrawal of the rejection is respectfully requested.

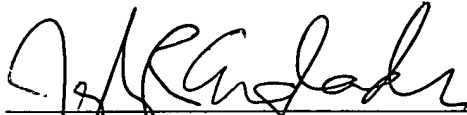
Applicant notes that claims 15-19 have been allowed. These claims are re-presented in claims 24-28. Also, Applicant respectfully notes that no basis for rejection of claim 14 has been stated in the Office Action. It is respectfully submitted that claim 14, as well as claims 24 through 28 are in condition for allowance. The Examiner's objections to claims 1-13 and 20-23 respectfully have been traversed. The remarks and the amendments to the specifications respectfully traverse the objections to the specification and the drawings moot. Since the amendments herein merely clarify the language of the specification and the claims, and no additional limitations have been made, no estoppel applies to these amendments.



Applicant: Poma, Frank, et al  
Serial No. 10/064,075  
June 19, 2003  
Page 20

It is believed that the application is now ready to be passed to issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. R. Englander", written over a horizontal line.

Joseph R. Englander, Reg. No. 38,871  
Dale Paul DiMaggio, Reg. No. 31,823  
MALIN, HALEY & DiMAGGIO, P.A.  
**Customer No. 22235**  
1936 South Andrews Avenue  
Ft. Lauderdale, Florida 33316  
Phone: (954) 763-3303  
Fax: (954) 522-6507